

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10856MEL

HOWARD KAPLAN,

Plaintiff,

v.

WEND MANAGEMENT, INC.,
WENDY'S OLD FASHIONED
HAMBURGERS OF NEW YORK,

Defendants.

JOINT PRE-TRIAL SCHEDULING STATEMENT

Pursuant to Fed. R. Civ. P. 16(b) and Local Rule 16.1, the parties hereby submit the following Joint Pre-trial Scheduling Statement.

1. Statement of the Claim

This case arises out of an incident occurring on April 29, 2001 at a Wendy's restaurant located in Westboro, Massachusetts owned by the Defendant, Wend Management as a franchisee of Wendy's International, Inc. In the afternoon of April 29, 2001, the Plaintiff, Howard Kaplan and a friend drove through the Wendy's drive-thru in an attempt to order food. The Plaintiff is a hearing impaired person who alleges that he was not properly served and/or accommodated because of his hearing disability while attempting to use the Defendant's drive-thru and has sought redress in this Court under both federal and state statutes. The Plaintiff alleges that the basis of jurisdiction is federal question jurisdiction.

2. Proposed Agenda for the Scheduling Conference

The parties have conferred regarding discovery and other pre-trial matters and propose the following agenda for the scheduling conference:

- a. Possibility of the case being converted into a class-action lawsuit
- b. Initial Disclosure timelines by plaintiff and defendant
- c. Proposed Discovery Schedule
- d. Proposed Motion Schedule
- e. Discussion of Alternative Dispute Resolution
- f. Discussion concerning trial by Magistrate Judge. At this point, the parties do not agree to a trial by a Magistrate Judge.

3. Joint Discovery Plan

The parties propose the following schedule for discovery:

Initial Disclosure pursuant to Fed. R. Civ.P. 26(a)(1) by plaintiff	April 22, 2005
Initial Disclosure pursuant to Fed R. Civ. P. 26(a)(1) by defendant	May 6, 2005
Completion of all written discovery by interrogatory or document request	August 12, 2005
Completion of all depositions as to fact witnesses	December 9, 2005
Plaintiff's Rule 26 Expert Disclosure	February 10, 2006
Defendant's Rule 26 Expert Disclosure	March 10, 2006
Filing of Dispositive Motions including those for Summary Judgment	May 12, 2006
Final Pre-trial conference	June 17, 2006

4. Proposed Motion Schedule

All dispositive motions, including those for summary judgment, will be filed and served by May 12, 2006. Any opposition to such motions will be filed within twenty-one (21) days after service of the motion; and any reply to such opposition will be filed within fourteen (14) days after service of the opposition.

5. Settlement Discussions

The parties have discussed the possibility of settling this matter prior to the Scheduling Conference. Although the parties have discussed and will continue to discuss the possibility of settlement, no settlement has been reached at the present time.

6. Certification

The parties' certifications required by Local Rule 16.1(D)(3) will be filed under separate cover before the Scheduling Conference.

Respectfully submitted,

Plaintiff,
By his attorneys,

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